



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

September 22, 1948

*modified 0-7060
in part*

Hon. L. A. Woods
State Superintendent
Department of Education
Austin, Texas

Opinion No. V-690

Attn.: Hon. T. M. Trimble
First Assistant

Re: Proper authority to
call an election for
uniform tax throughout
Rockdale School Dis-
trict, composed of
City of Rockdale and
other areas taken in
by city for school
purposes only.

Dear Sir:

We refer to your letter to which was attached
a letter from the Mayor of the City of Rockdale, from
which we quote, in part:

"The City of Rockdale was incorporated for
municipal purposes about 1872, and soon af-
ter such incorporation, assumed control of
its public schools, within the city. At
that time the schools were managed by a
board of five trustees, who were elected
biannually by the City Council. This me-
thod of electing trustees for the school
district within the city, was continued un-
til about 1898, when the City Council, by
ordinance, provided for a board of seven
trustees, to be elected by the qualified
voters of the City of Rockdale. This last
mentioned method of choosing trustees has
been continued, and the Rockdale Public
Schools are now being managed and control-
led by a board of seven trustees, elected
by the qualified voters of the City of
Rockdale.

"Within the last three years, the City Coun-
cil of the City of Rockdale, acting under
the provisions of Article 2803, Revised Stat-
utes of 1925, has, by ordinances, included
three or four rural districts, in the Rock-
dale School District, for school purposes
only, and the children within the scholas-
tic age in these rural districts are now

attending the Rockdale Schools

"The City of Rockdale levies and collects an annual maintenance tax of 50 cents on the \$100.00 valuation of all property in the city for the support and maintenance of the schools, and the rural districts which have been included in the Rockdale School District, for school purposes only, levy a maintenance tax, but this tax is not uniform in all of these districts.

"The City Council of the City of Rockdale is being asked by petition, to order an election in the City of Rockdale, and in the districts so added for school purposes only, to determine whether or not a maintenance tax of, not exceeding \$1.00 on the \$100.00 valuation of all property in these districts shall be levied as a maintenance fund for the benefit of the Rockdale Schools.

"The City Council of the City of Rockdale does not know whether the power to order this election is vested in the City Council, or in the Board of Trustees of the Rockdale School District, and I am therefore submitting the matter to you, with request that you answer the following questions:

"(a) Did the extension of the city's boundaries to include territory not within the city limits of the City of Rockdale, for school purposes only, change the character or status of the existing municipal, or city school district?

"(b) Has the City Council of the City of Rockdale authority to order such election, to determine whether a maintenance tax be levied upon property in the entire district, including that attached for school purposes only?

"(c) Is the power to order this election for a maintenance tax on property in the entire district vested in the City Council of the City of Rockdale, or is it vest-

ed in the Board of seven trustees of the Rockdale School District?

"(d) Has the Board of Trustees of the Rockdale School District the power to order the election to determine whether such maintenance tax be levied upon the property of the entire district?"

In the light of the above submitted facts, we understand that prior to the last three years the Rockdale Independent School District was a municipally controlled school district whose boundaries were coterminous with those of the City of Rockdale, and that within the last three years, three or four contiguous school districts were taken into the city, by extension of the corporation lines of the city, for school purposes only, under and in accordance with the procedure of Article 2803, V. C. S.

In the case of Kuhn v. City of Yoakum, 257 S.W. 337, cited with approval in Hayes v. City of Beaumont, 190 S.W.(2d) 835, the contention was made that if territory of a common school district was validly annexed to the City of Yoakum for school purposes only, then the Yoakum school district lost the character of a school district provided by the Constitution, Article VII, Section 3, towit, a city having control of the schools within its limits, and became another character of district, the control and management of which are committed to the board of trustees, and the City of Yoakum had no authority to order any election for school taxes. The court's answer to such contention, at page 339, is as follows:

"Just how the valid annexation of the new territory to the city for school purposes only could metamorphose the district so merely enlarged into one of another character, subject to a different system of government, does not readily occur. If the situation before was that of a city or town having control of the schools within its limits as then existing, and those limits were lawfully extended, it would be none the less so afterwards. In a school district of that sort, R. S. Art. 2875, makes it the duty of the city council to submit the question of a tax to a vote of the property tax payers, and

no other body is authorized to do so."

See also City of Houston v. Little, 244 S.W. 247, to the same effect; Attorney General's Opinions Nos. 0-6059, 0-7060. The general statement made in the first paragraph on page 7 of Opinion No. 0-7060 is in error and should be disregarded.

In Hayes v. City of Beaumont, supra, the court went further to hold that once a school district's character or status has been established as a municipal school district, then an extension of the city's boundaries for municipal purposes only (See Article 2804, third paragraph) could likewise not have the effect of changing that character or status.

Whether or not the holding of the Commission of Appeals in M.K. & T. Railway Co. v. Whitesboro, 287 S.W. 904, is in conflict with the above cited cases need not be considered here, for the reason that same is not now applicable to municipally controlled school districts, the 50¢ tax limitation provision of Section 3 of Article VII, Constitution, therein considered not now being in our Constitution. Article VII, Section 3, was amended in 1926, and as amended the Legislature is left free to fix such a tax limit as it deems advisable. Opinion No. 0-7060.

Coming now to your questions (b), (c) and (d), they are inter-related, and may be considered together.

The statute cited as Article 2875 in the above quotation from the City of Yoakum case is now codified in Vernon's Civil Statutes as Article 2798. It provides, in part:

"After a city or town has assumed control of the public free schools within its limits, the governing body shall also submit the question to the property tax payers as to whether or not the additional amount as provided for hereinafter shall be raised by taxation . . ."

Article 2799, V. C. S. reads:

"The governing body of any city or town which is a separate and independent school district, whether incorporated un-

der any act of the Congress of the Republic or the Legislature of Texas, or under any act or incorporation whatever, shall have power by ordinance to annually levy and collect ad valorem taxes for the support and maintenance of public free schools and for the erection and equipment of public free school buildings in the city or town. The proposition submitted may be for such a rate of ad valorem tax not exceeding such per cent. as may be voted by a majority vote of all votes cast at any such election. If the proposition is carried, the school tax shall be continued to be annually levied and collected for at least two years, and thereafter, unless it be discontinued at an election held to determine whether the tax shall be continued or discontinued at the request of fifty property taxpayers of such independent district. When the tax is continued no election to discontinue it shall be held for two years; when the tax is discontinued no election to levy a tax shall be held during the same year."

Article 2800, V. C. S., provides:

"If the vote of the taxpayers is in favor of said tax, then the governing body of a city or town which has assumed exclusive control of the public free schools in its limits shall annually thereafter levy and assess upon the taxable property in the limits of such district, by ordinance duly passed and approved, in accordance with the usual assessment of taxes for municipal purposes, such additional tax, not to exceed the rate voted, as may be necessary for the support and maintenance of the public schools and for the erection and equipment of public school buildings for nine months in the year. If a specific rate of tax has been voted, the governing body shall have no discretion in determining the rate to be levied, but shall levy and assess the same at the rate voted."
(Emphasis in above statutes added).

Article 2801, V. C. S., provides:

"In a city or town constituting an independent school district, and where a special tax for school purposes has been voted by the people or provided by special charter, the board of trustees shall determine what amount of said tax, within the limit voted by the people or fixed by special charter, will be necessary for the maintenance and support of the school and for the erection and equipment of public school buildings for each current year; and the governing body of such city or town, upon the requisition of the said board of trustees, shall annually levy and collect said tax, as other taxes are levied and collected; and said tax, when collected, shall be placed at the disposal of the said school board, by paying over monthly to the treasurer of said board the amount so collected, to be used for the maintenance and support of the public free schools and for the erection and equipment of public school buildings in such district."

Taxation for the management and control of the public schools of school districts is governed by Section 3, of Article VII of the Constitution. Opinion No.0-6059 and cases therein cited. The section provides for legislative authorization of additional taxation by popular vote for maintenance and for the erection of school buildings.

The Legislature in H. B. 46, 35th Legislature, 3rd C.S., Acts 1917, amended what was there Article 925, R.S. 1911, (now Article 823, V.C.S.) so as to provide that cities and towns constituting separate and independent school districts may levy and collect such ad valorem tax for the support and maintenance of their public free schools and for the erection and equipment of school buildings therefor as under S. B. 470, 35th Legislature, Acts 1917, (now Articles 2799 and 2800, V.C.S.) their electors may determine. As pointed out by the Supreme Court in City of Rockdale v. Cureton, 111 Tex. 136, 229 S.W. 852, this amendment by its terms applies both to cities and towns which have extended their limits for school purposes and those which have not so extended their limits, classifying them separately.

Article 2803, under which we are advised the

City of Rockdale has taken in other contiguous school districts or areas for school purposes only, authorizes a city to "extend its corporation lines" for school purposes only. It has been held that when the lines of a city are extended in the manner provided by law, the territory included in such extension for the purpose for which such extension was made, is thereby included within such corporate limits, and for such purpose becomes a part thereof. Such town or city still remains in control of its public schools "within its limits" and such added territory is, for school purposes, within its limits. *Poteet v. Bridges*, 248 S.W. 415.

The title to school property of a municipally controlled school district is vested in the board of school trustees as is also the use and control of school buildings after they are erected. Article 2772, V. C. S. But the boards of trustees have no authority to raise for such purposes money by taxation. Articles 2798, 2799, 2800, 2801, V. C. S. In short, the city provides the school houses and the moneys necessary to operate same, in addition to those provided by the state, and the board of school trustees manages and controls the schools. *Poteet v. Bridges*, supra.

Accordingly, the City Council alone, that is, the governing body, of the City of Rockdale has the authority to order an election to determine whether a maintenance tax be levied upon property in the entire district, including that attached under Article 2803 for school purposes only.

SUMMARY

The extension of boundaries of the City of Rockdale for school purposes only, under Article 2803, V. C. S., does not change the character or status of the existing municipally controlled school district. *Kuhn v. City of Yoakum*, 257 S.W. 337; *Hayes v. City of Beaumont*, 190 S.W.(2d) 835; *Poteet v. Bridges*, 248 S.W. 415.

The governing body, the City Council of the City of Rockdale, alone has the authority to order an election to determine whether a school maintenance tax be levied upon property in its entire school district, in-

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cluding that attached under Art. 2803 for
school purposes only. Arts. 2798, 2799,
2800, 2801, V. C. S.; Poteet v. Bridges,
supra.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

CEO:mw

By

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